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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 JAMES DAVID KARNATH,

10 Plaintiff,

11 v.

12 TRACY DANIELS,

13 Defendant.

Case No. C08-1002-RSM-BAT

REPORT AND RECOMMENDATION

14 INTRODUCTION AND SUMMARY CONCLUSION

15 Plaintiff James Karnath has filed a civil rights action under 42 U.S.C. § 1983. Plaintiff
16 alleges in his second amended complaint that defendant Tracy Daniel violated his Eighth
17 Amendment right to be free from cruel and unusual punishment when defendant ordered, and
18 participated in, an assault on plaintiff in November 2007.¹ Defendant Daniel has now filed a
19 motion for summary judgment and plaintiff has filed a response to defendant's motion. The
20 Court, having reviewed defendant's motion, and the balance of the record, concludes that

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22 ¹ Plaintiff's second amended complaint contains a series of additional allegations
23 concerning harm plaintiff claims he suffered while confined at various Department of
Corrections facilities, as well as allegations concerning the lawfulness of his current
confinement. However, the only allegation implicating Tracy Daniel, the lone defendant in this
action, is that concerning the November 2007 assault.

1 defendant's motion for summary judgment should be **GRANTED** and this action should be
2 **DISMISSED** with prejudice.

3 BACKGROUND

4 Defendant Tracy Daniel is a Correctional Unit Supervisor at the Monroe Correctional
5 Complex, Washington State Reformatory Unit ("WSR"), where he is responsible for overseeing
6 operations of an offender housing unit. (Dkt. No. 128, Ex. 1 at 1.) On November 26, 2007,
7 plaintiff, who was then housed in defendant Daniel's unit, was called in to defendant's office in
8 response to kites plaintiff had submitted requesting to speak with defendant. (*Id.*) Plaintiff
9 alleged in one of his kites that he had been assaulted by another offender. (*Id.*) He alleged in
10 another kite that a member of the WSR staff, Sergeant Lamm, made comments to him which he
11 deemed to be potentially life threatening. (*See id.* and Attach. A.) Plaintiff also made allegations
12 in that kite concerning Sergeant Lamm's sexuality. (*See id.*, Ex. 1 at 1-2.)

13 Given the nature of the allegations made in the kites, defendant Daniel decided to place
14 plaintiff on involuntary protective custody/administrative segregation status pending an
15 investigation into his claims. (*See id.*, Ex. 1 at 2 and Attach. B.) When defendant informed
16 plaintiff of this decision, and directed plaintiff to "cuff up" so he could be escorted to the
17 protective custody/administrative segregation unit, plaintiff refused to comply and attempted to
18 walk out of defendant's office. (*Id.*, Ex. 1 at 2.) Plaintiff was ordered to return to the office by
19 other WSR staff and he complied. (*Id.*) Subsequently, plaintiff was ordered several times to
20 stand and be cuffed and he repeatedly refused to comply. (*See id.* and Attach. B and D.)

21 Because of plaintiff's repeated refusals to comply, defendant directed a correctional
22 officer to retrieve a video camera in order to record a use of force incident should one become
23 necessary. (*See id.* and Attach. D.) When the officer returned with the video camera, plaintiff

1 was again directed to "cuff up" and plaintiff again failed to comply. (*See* Dkt. No. 128, Ex. 1 at
2 3 and Attach. D.) At that point, plaintiff was taken to the ground by two WSR officers. (*See id.*
3 and Attach. C at 1, 2 and 4, and Attach. D at 1.) Defendant, together with another WSR officer,
4 controlled plaintiff's legs to assist the two officers who were attempting to cuff plaintiff. (*Id.* and
5 Attach. D.) After plaintiff was cuffed, he was escorted to the protective custody/administrative
6 segregation unit. (*Id.*, Ex. 1 at 3.) Once there, plaintiff was examined by medical personnel and
7 a one centimeter superficial abrasion on plaintiff's right wrist was the only injury noted. (*See id.*,
8 Ex. 1 at 3-4 and Attach. E.)

9 Several days later, plaintiff's left wrist was x-rayed after plaintiff apparently complained
10 of pain and swelling in that wrist, but the x-rays revealed no fracture. (*See* Dkt. No. 104-2 at 2-
11 3.) Subsequent offers by medical personnel to repeat the x-rays and schedule an orthopedic
12 evaluation were rejected by plaintiff. (*See* Dkt. No. 128, Ex. 2, Attach. A at 3 and Attach. B.)

13 DISCUSSION

14 Summary Judgment Standard

15 Summary judgment is proper only where "the pleadings, depositions, answers to
16 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
17 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter
18 of law." Fed.R.Civ.P. 56(c). The moving party has the burden of demonstrating the absence of a
19 genuine issue of material fact for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257
20 (1986). Genuine disputes are those for which the evidence is such that a "reasonable jury could
21 return a verdict for the nonmoving party." *Id.* Material facts are those which might affect the
22 outcome of the suit under governing law. *Id.*

1 In response to a properly supported summary judgment motion, the nonmoving party
2 may not rest upon mere allegations or denials in the pleadings, but must set forth specific facts
3 demonstrating a genuine issue of fact for trial and produce evidence sufficient to establish the
4 existence of the elements essential to his case. *See* Fed. R. Civ. P. 56(e). A mere scintilla of
5 evidence is insufficient to create a factual dispute. *See Anderson*, 477 U.S. at 252. In ruling on a
6 motion for summary judgment, the court is required to draw all inferences in a light most
7 favorable to the nonmoving party. *Id.* at 248. The court may not weigh the evidence or make
8 credibility determinations. *Id.*

9 Section 1983 Standard

10 In order to sustain a cause of action under 42 U.S.C. §1983, a plaintiff must show (i) that
11 he suffered a violation of rights protected by the Constitution or created by federal statute, and
12 (ii) that the violation was proximately caused by a person acting under color of state law. *See*
13 *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The causation requirement of § 1983
14 is satisfied only if a plaintiff demonstrates that a defendant did an affirmative act, participated in
15 another's affirmative act, or omitted to perform an act which he was legally required to do that
16 caused the deprivation complained of. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981)
17 (quoting *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th Cir. 1978)).

18 Eighth Amendment

19 Plaintiff alleges that defendant Tracy Daniels violated his Eighth Amendment right to be
20 free from cruel and unusual punishment when he ordered, and personally participated in, a brutal
21 physical assault on plaintiff. (Dkt. No. 104 at 7.) Plaintiff contends that the assault was
22 unprovoked, that the use of force was extreme, and that defendant Daniels' actions caused him
23 severe pain and irreparable injury as evidenced by medical tests showing a broken wrist. (*Id.*)

1 The Eighth Amendment guarantees that individuals convicted of crimes will not be
2 subject to cruel and unusual punishment. However, only the unnecessary and wanton infliction
3 of pain constitutes cruel and unusual punishment forbidden by the Eighth Amendment.
4 *Ingraham v. Wright*, 430 U.S. 651, 670-71 (1977). To be cruel and unusual punishment, conduct
5 that does not purport to be punishment at all must involve more than ordinary lack of due care
6 for the prisoner's interests or safety. *Whitley v. Albers*, 475 U.S. 312 (1986).

7 When a prisoner alleges the excessive use of force under the Eighth Amendment, the
8 “core judicial inquiry” is whether the force was applied in a good-faith effort to maintain or
9 restore discipline, or maliciously and sadistically for the purpose of causing harm. *Hudson v.*
10 *McMillian*, 503 U.S. 1, 6-7 (1992). Among the factors that may be appropriate to consider in
11 determining whether the use of force in any particular instance was wanton and unnecessary are
12 the presence or absence of serious injury, the need for application of force, the relationship
13 between the need for force and the amount of force used, the threat “reasonably perceived by the
14 responsible officials,” and, “any efforts made to temper the severity of a forceful response.” *See*
15 *id.* at 7.

16 Defendant argues in his summary judgment motion that plaintiff’s Eighth Amendment
17 claim must fail because plaintiff has not presented any evidence showing that he sustained an
18 actual injury during the use of force incident, nor has he presented any evidence showing that
19 defendant’s use of force rises to the level of cruel and unusual punishment. (*See* Dkt. No. 128 at
20 6-8.) Plaintiff argues in his response to defendant’s motion that the motion is invalid because it
21 was filed after plaintiff served a notice of default/default judgment and because defendant failed
22 to attach to his declaration in support of his summary judgment motion a copy of an inmate kite
23 referenced in the declaration. (*See* Dkt. No. 143 at 6-7.) In addition to these procedural

arguments, plaintiff also argues that there exists a genuine issue of material fact pertaining to defendant Daniel's directive that plaintiff "cuff up." (Dkt. No. 143 at 7.) Plaintiff appears to contend that he was ordered to sit down in the chair in defendant's office, not to stand and "cuff up."² (*Id.*)

Plaintiff's procedural arguments are frivolous. No default judgment has been entered in this action and, thus, defendant's summary judgment motion is properly before the Court. Furthermore, the fact that a document referenced in defendant's declaration was not attached to the declaration does not violate the provisions of Fed. R. Civ. P. 56(e)(1), as alleged by plaintiff, and certainly does not invalidate defendant's entire motion.³ Having briefly addressed plaintiff's procedural challenges to defendant's motion, the Court now turns to the substance of that motion and plaintiff's excessive force claim.

As noted above, one of the relevant considerations in evaluating a claim of excessive force is the presence of absence of serious injury. Plaintiff contends that he suffered a broken wrist as a result of the November 2007 use of force incident. However, the evidence in the record shows that the only injury visible and/or reported immediately following the incident was a small, superficial abrasion on plaintiff's right wrist. (*See* Dkt. No. 128, Ex. 1, Attach. E.)

² The Court notes that plaintiff did not submit any evidence in conjunction with his response to defendant's summary judgment motion. (*See* Dkt. No. 143.) However, plaintiff did submit to the Court, in conjunction with his second amended complaint, copies of the medical records relevant to the injury he claims to have suffered in the November 2007 use of force incident. (*See* Dkt. No. 104-2.) Plaintiff also submitted to the Court, in June 2011, a DVD which contains a video of the incident in question. (*See* Dkt. No. 120.) The Court has considered these materials in making its recommendation regarding the appropriate disposition of defendant's summary judgment motion.

³ Rule 56(e)(1) provides that "If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may . . . give an opportunity to properly support or address the fact."

1 Several days after the incident, x-rays were taken of plaintiff's left wrist, apparently in response
2 to complaints of pain and swelling, but those x-rays did not reveal any fracture. (*See* Dkt. No.
3 104-2 at 2, 3 and 14.) In fact, none of the medical records supplied by plaintiff support his
4 contention that he suffered a broken wrist, or any other serious injury, as a result of the use of
5 force incident. (*See* Dkt. No. 104-2.)

6 The video supplied by plaintiff also undermines his contention that he suffered severe
7 pain and irreparable injury as a result of the use of force incident. The video shows not only the
8 use of force incident, but also plaintiff's subsequent transfer from defendant's office to the
9 segregation unit. (*See* Dkt. No. 120.) Plaintiff gives no indication in the video that he was
10 injured or in pain. (*See id.*) In sum, there is no evidence in the record that plaintiff suffered any
11 serious injury as a result of the use of force incident in November 2007.

12 Other relevant considerations in evaluating a claim of excessive force are the need for
13 application of force and the relationship between the need for force and the amount of force
14 used. Plaintiff claims that the use of force was unprovoked and extreme. However, the evidence
15 in the record demonstrates the contrary. Defendant's declaration, and the documents submitted
16 in support thereof, establish that plaintiff was directed to "cuff up" on multiple occasions and
17 that he refused to comply. (*See* Dkt. No. 128, Ex. 1, Attach. C and D.) On the video supplied by
18 plaintiff, an officer can be heard asking plaintiff if he is refusing to cuff up and plaintiff appears
19 to ignore the inquiry as he continues to describe his grievances to defendant Daniel. (*See* Dkt.
20 No. 120.) When plaintiff ignored the inquiry about his refusal to cuff up, two corrections
21 officers, who had been standing by, approached plaintiff, took hold of his arms, and pulled him
22 forward out of his chair and face first onto the floor. (*Id.*) Defendant Daniel and another
23 corrections officer controlled plaintiff's legs while the two original officers applied handcuffs.

1 (See Dkt. No. 120.) The officers then brought plaintiff to his feet and escorted him out of
2 defendant's office and to the segregation unit. (*Id.*)

3 While plaintiff did not appear to pose a physical threat to defendant or to the other
4 officers present prior to the application of force, the record makes clear that plaintiff was
5 nonetheless being non-compliant by refusing directives to "cuff up." Plaintiff does not have the
6 discretion to simply disregard clear and reasonable directives from corrections staff who are
7 tasked with maintaining order and discipline within the institution. While removing plaintiff
8 from his chair to the floor was not a delicate process, it does not appear that corrections staff
9 used any more physical force than necessary to restrain plaintiff and escort him to the
10 segregation unit.

11 Defendant has demonstrated, through his evidence and arguments, that the decision to use
12 force against plaintiff on November 26, 2007, was not undertaken maliciously and sadistically
13 for the purpose of causing harm but was instead undertaken in an effort to maintain discipline.
14 The limited evidence and argument presented by plaintiff does not create a genuine issue of
15 material fact for trial. In fact, plaintiff's evidence actually serves to reinforce the conclusion that
16 defendant did not violated plaintiff's right to be free from cruel and unusual punishment.
17 Accordingly, defendant is entitled to judgment as a matter of law with respect to plaintiff's
18 Eighth Amendment claim.

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1 CONCLUSION

2 Based upon the foregoing, this Court recommends that defendant's motion for summary
3 judgment be **GRANTED**, and that plaintiff's second amended complaint and this action be
4 **DISMISSED** with prejudice. A proposed order accompanies this Report and Recommendation.

5 DATED this 18th day of October, 2011.

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9 BRIAN A. TSUCHIDA
United States Magistrate Judge